FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE
Criminal application No. 3455 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mrs. K.V. Saste for applicant.
Mr. R. D. Suryawanshi for respondent nos. 1 to 5.

CORAM: B.H. MARLAPALLE
&
SMT. R.S. DALVI JJ.

DATE:19/1/2006

P.C.:

Heard learned APP as well as learned counsel for the respondents/ accused who were set on trial in Sessions Case No. 12 of 1999 for the offences under sections 147, 148, 307, 324 and 326 IPC. The learned II Additional Sessions Judge, Kalyan was pleased to acquit all the five accused by his order dated 5.2.2005. This is an application seeking leave under

section 378 Cr. P.C., for filing an appeal against the order of acquittal.

All the accused were working in the factory by name NRC Company located at village Mohne, Taluka Kalyan and the alleged incident had taken place on 25.10.1997 in the said factory premises on the ground of the workers demands. According to the prosecution there was an agitation against he management on account of payment of bonus and at about 12.45 noon while some managerial staff members were returning to their respective chambers in the factory four workers came from behind and assaulted them with iron pipes, iron rods and wooden sticks in their hands and they were shouting “Maro Pakdo”. They were wearing boiler suits and jackets and had also concealed their faces with the aid of masks. It was the prosecution case that the Managing Director Shri Satishkumar was assaulted by all of them.

Before the trial court the prosecution

mainly relied upon the testimony of the so called two eye witnesses viz., Goplsing Ravat and Shri Satishkumar. Both these witnesses stated that the persons who committed the offence assaulted Shri Satishkumar. However, before the trial court they could not be identified by any of the witnesses. The trial court therefore rejected the so called ocular evidence. On the circumstantial evidence the trial court noted that the recovery of mask and hacksaw blade could not be proved because the panch witness concerned turned hostile and the recovery of mask and hacksaw was to be proved only by the evidence of the Investigating Officer. The trial court did not accept the same without corroboration. By analyzing the evidence placed before the learned Judge and the reasoning set out by him in support of the order of acquittal we do not find any reason to grant leave under section 378(3) Cr. P.C. The application is therefore rejected.

(SMT.R.S. DALVI J.)(B.H. MARLAPALLE J.)